

14.2. Partial Use or Occupancy of the Premises.

14.2.1. The **City** may occupy or use any completed or partially completed portion of the Work at any stage. Such partial occupancy or use may begin whether or not the portion is substantially complete, provided that the respective responsibilities of the **City** and the **Contractor** with respect to payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, insurance, correction of the Work, and warranties shall be established by agreement of the **City** and the **Contractor** or, absent such agreement, shall be determined by the **Design Professional** subject to the right of either party to contest such determination as provided in Article 16.

14.2.2. Immediately prior to such partial occupancy or use, the **City**, the **Contractor** and the **Design Professional** shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

14.2.3. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

14.2.4. (*Reference: M.G.L. c. 30, §39G*). Within sixty-five (65) days after the effective date of a declaration of Substantial Completion, the **City** shall prepare and send to the **Contractor** for acceptance a Substantial Completion estimate for the quantity and price of the Work done and all but one percent (1%) retainage on that Work, including the quantity, price and all but one percent (1%) retainage for the undisputed part of each item and extra work item in dispute, but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory items and less the total periodic payments made to date for the Work. The **City** shall also deduct from the Substantial Completion estimate an amount equal to the sum of all demands for direct payment filed by Subcontractors and not yet paid to Subcontractors or deposited in joint accounts pursuant to M.G.L. c. 30, §39F.

14.2.5. (*Reference: M.G.L. c. 30, §39G*). If the **City** fails to prepare and send to the **Contractor** any Substantial Completion estimate required by the provisions herein on or before the date specified, the **City** shall pay to the **Contractor** interest on the amount which would have been due to the **Contractor** pursuant to such Substantial Completion estimate at the rate of three (3) percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the **City** sends that Substantial Completion estimate to the **Contractor** for acceptance or to the date of payment therefor, whichever occurs first. The **City** shall include the amount of such interest in the Substantial Completion estimate.

14.2.6. (*Reference: M.G.L. c. 30, §39G*). Within fifteen (15) days after the effective date of the declaration of Substantial Completion, the **City** shall send to the **Contractor** by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory items, and unless delayed by causes beyond its control, the **Contractor** shall complete all such items within forty-five (45) days after the receipt of such list or before the date for final payment and

acceptance, whichever is later. If the **Contractor** fails to complete such Work within such time, the **City** may, subsequent to seven (7) days' written notice to the **Contractor** by certified mail, return receipt requested, terminate the Contract and complete the incomplete or unsatisfactory items and charge the cost of same to the **Contractor**.

14.3. Final Inspection.

14.3.1. Upon written notice from the **Contractor** that the entire Work or an agreed portion thereof is complete, the **Design Professional** will make a final inspection with the **City** and the **Contractor** and will notify the **Contractor** in writing of all particulars which this inspection reveals that the Work is incomplete or defective. The **Contractor** shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

ARTICLE 15: GUARANTEES AND WARRANTIES

15.1. In General.

15.1.1. All guarantees and warranties specifically called for by the Specifications shall expressly run to the benefit of the **City**.

15.2. Warranties.

15.2.1. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, unless otherwise provided in the certificate of Substantial Completion.

15.2.2. The **Contractor** warrants that the materials and equipment furnished under the Contract will be new and of recent manufacture unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The **Contractor's** warranty excludes remedy for damage or defect caused by abuse, Modifications not executed by the **Contractor**, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the **Design Professional**, the **Contractor** shall furnish satisfactory evidence as to the kind and quality of material and equipment.

15.2.3. The **Contractor** warrants that title to all Work covered by an application for payment will pass to the **City** either by incorporation in the construction or upon the receipt of payment by the **Contractor**, whichever occurs first, free and clear of all liens. The **Contractor** further agrees that the submission of any application for payment shall conclusively be deemed to waive all liens with respect to said Work to which the **Contractor** may then be entitled, provided that such waiver of the lien rights shall not waive the **Contractor's** right to payment for such Work.

15.2.4. The **Contractor** warrants and guarantees that title to all Work, materials, and equipment covered by any application for payment, whether incorporated in the Project or not, will pass to the **City** no later than the time of payment free and clear of all liens.

15.2.5. No materials or supplies for the Work shall be purchased by the **Contractor** or Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The **Contractor** warrants that it has good title to all materials and supplies used by it in the Work, free from all liens.

15.2.6. The **Contractor** shall indemnify and hold the **City** harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workers, mechanics, material persons, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The **Contractor** shall at the **City's** request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the **Contractor** fails to do so, then the **City** may, after having served written notice on the **Contractor** either pay unpaid bills, of which the **City** has written notice, direct, or withhold from the **Contractor's** unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the **Contractor** shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations on the **City** to either the **Contractor** or its surety. In paying any unpaid bills of the **Contractor**, the **City** shall be deemed the agent of the **Contractor** and any payment so made by the **City** shall be considered as payment made under the Contract by the **City** to the **Contractor** and the **City** shall not be liable to the **Contractor** for any such payment made in good faith.

15.3. Extended Warranties and Guarantees.

15.3.1. Any defective Work that is either corrected or replaced will be warranted and guaranteed for a period of three (3) years from the date of such correction or replacement.

ARTICLE 16: CLAIMS

16.1. In General.

16.1.1. **Written Notice.** A Claim must be made by written notice to the other party.

16.1.2. **Content of Notice.** The notice must include all written supporting data.

16.1.3. **Burden of Proof.** The party making the Claim must substantiate the Claim.

16.2. Time Limits on Claims.

16.2.1. Unless otherwise provided, all Claims must be made within twenty-one (21) days after the occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Any

change or addition to a previously made Claim shall be made by a written notice within the twenty-one-day period in order to be valid.

16.3. Continuing Contract Performance.

16.3.1. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, the **Contractor** shall proceed diligently with performance of the Contract and the **City** shall continue to make payments in accordance with the Contract Documents.

16.4. Types of Claims.

16.4.1. Claims for Differing Subsurface or Latent Physical Conditions. (*Reference: M.G.L. c. 30, §39N;*). If, during the progress of the Work, the **Contractor** or the **City** discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those shown on the Plans or indicated in the Contract Documents, either the **Contractor** or the **City** may request an equitable adjustment in the Contract Sum of the Contract applying to Work affected by the differing Site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a **Contractor**, or upon its own initiative, the **City** shall make an investigation of such physical conditions, and if they differ substantially or materially from those shown on the Plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Plans and Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the **City** shall make an equitable adjustment in the Contract Sum and the Contract shall be modified in writing accordingly.

16.4.2. Claims for Additional Cost. If the **Contractor** claims that any acts or omissions of the **City** or the **Design Professional**, including any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and the **Contractor** has not received a written acknowledgment by the **City** or the **Design Professional** that extra payment will be made or time extended on account thereof, the **Contractor** shall promptly so notify the **Design Professional** in writing of such Claim and shall proceed with the Work relating to such Claim and all rights of both parties with respect to such Claim shall be deemed to have been reserved. No Claim by the **Contractor** on account of such acts, omissions, instructions, or orders shall be valid unless the **Contractor** has so notified the **Design Professional** before proceeding.

16.4.2.1. Under no circumstances shall a Claim be made for additional cost where adverse weather conditions are the basis for the Claim.

16.4.3. Claims for Additional Time. If the **Contractor** wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The **Contractor** shall have the burden of demonstrating the effect of the claimed delay on the Contract Time and

shall furnish the **Design Professional** with such documentation relating thereto as the **Design Professional** may reasonably require. Under no circumstances shall the **Contractor** make a Claim for an increase in the Contract Time due to a change in the **Contractor's** early completion date. If the increase in the Contract Time extends beyond the Contract Time established by the **City**, only the time that so extends beyond the Contract Time shall be reviewed and considered. In the case of a continuing delay, only one Claim is necessary.

16.4.3.1. Under no circumstances shall a Claim be made for additional time where adverse weather conditions are the basis for the Claim.

16.4.4. **Claims for Injury to Person or Damage to Property.** Should either party to the Contract suffer injury to person or damage to property because of any error, omission, or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, a Claim will be made in writing to the other party within twenty-one (21) days of the occurrence of the act giving rise to the injury or damage.

16.5. Review of Claims.

16.5.1. **Initial Referral.** All Claims, the bases of which arise prior to final payment or the earlier termination of the Contract, shall be referred initially to the **Design Professional** for action as provided herein.

16.5.2. **Time Period and Action.** The **Design Professional** shall review Claims and shall do one of the following within fourteen (14) days of receipt of the Claim:

16.5.2.1. defer any action with respect to all or any part of a Claim for the purpose of requesting and receiving additional information from either party;

16.5.2.2. decline in writing to render a decision for any reason which it deems appropriate (including, but not limited to, the fact that the Claim involves allegations of fault on the part of the **Design Professional**); or

16.5.2.3. render a decision on all or a part of the Claim.

16.5.3. If the **Design Professional** requests additional information, the **Design Professional** shall take action with respect to the Claim no later than fourteen (14) days after receipt of the additional information. The **Design Professional** shall notify the parties in writing of its disposition of such Claim. If the **Design Professional** renders a decision or declines to render a decision, either party may proceed in accordance with paragraph 16.7.

16.6. Decisions.

16.6.1. **Decisions by the City or the Design Professional.** (Reference: M.G.L. c. 30, §39P;). In every case in which this Contract requires the **City**, any official, or its **Design Professional** to make a decision on interpretation of the Specifications, approval of equipment, material or any other approval, or progress of the Work, the decision shall be made promptly

and, in any event, no later than fourteen (14) days after the written submission for decision; but if such decision requires extended investigation and study, the **City**, the official, or the **Design Professional** shall, within fourteen (14) days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made.

16.6.2. When Decision of the Design Professional is Final and Binding. The decision of the **Design Professional** shall be final and binding on the parties, unless a party files suit or a demand for arbitration within thirty (30) days after the date of the decision.

16.6.3. When Decision of the Design Professional is Not Final and Binding. (*Reference: M.G.L. c. 30, §39J*). Notwithstanding any contrary provision of this Contract, no decision by the **City** or by the **Design Professional** on a dispute, whether of fact or of law, arising under said Contract shall be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

16.6.4. Resolved Claims. If a Claim is resolved, the **Design Professional** shall obtain or prepare the appropriate documentation and provide the **City** and the **Contractor** with a copy of same.

16.7. Arbitration.

16.7.1. Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect, subject to the provisions of paragraph 16.7.7. In any such arbitration in which the amount stated in the demand is \$100,000 or less, the American Arbitration Association shall appoint a single arbitrator in accordance with such Rules, who shall be a lawyer. In any such arbitration in which the amount stated in the demand is in excess of \$100,000, the demand shall include the name of an arbitrator appointed by the claimant. The respondent shall appoint a second arbitrator and shall notify the claimant in writing of such appointment within thirty (30) days of receipt of the demand, failing which the matter shall be decided by the arbitrator named in the claimant's demand. Within thirty (30) days after the claimant's receipt of notice of the appointment of the second arbitrator, the two arbitrators shall appoint a neutral arbitrator and shall notify the parties in writing of such appointment, failing which either party may apply to the American Arbitration Association to appoint such neutral arbitrator. If such neutral arbitrator is appointed by the American Arbitration Association, he or she shall be a lawyer.

16.7.2. Rules for Arbitration. If the neutral arbitrator is appointed by the American Arbitration Association, the said Association shall administer the arbitration and its Construction Industry Arbitration Rules shall govern all aspects of the proceeding including the enforcement of any award. If the neutral arbitrator is not appointed by the American Arbitration Association, then the panel of arbitrators shall act as the administrator of the arbitration but the Construction

Industry Arbitration Rules of the Association shall nonetheless govern all aspects of the proceeding, including the enforcement of any award, provided however that the arbitration panel shall have all of the powers and duties conferred on the Association pursuant to said rules. In addition, the following rules shall govern the selection of arbitrators and the proceedings:

16.7.2.1. Neither party may appoint as arbitrator an employee or an owner of that party, nor the parent, spouse, or child of an employee or owner of that party.

16.7.2.2. After the neutral arbitrator has been appointed, neither party may engage in *ex parte* communication with any arbitrator.

16.7.3. When Arbitration May Be Demanded. Demand for arbitration of any Claim, the basis of which arises prior to final payment or the earlier termination of the Contract may not be made before the earlier of (1) the date on which the **Design Professional** has rendered a written decision on the Claim or has notified the parties in writing that such decision will not be rendered or (2) forty-five (45) days following receipt by the **Design Professional** of a written request for a decision sent by registered or certified mail to both the **Design Professional** and the other party to this Contract.

16.7.3.1. In no event shall a demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

16.7.4. Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the **Design Professional**, the **Design Professional's** employees or consultants, except by written consent containing specific reference to the Contract and signed by the **Design Professional**, the **City**, the **Contractor**, and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the **City**, the **Contractor**, a separate contractor, and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the **City**, the **Contractor**, or a separate contractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity so named or described herein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Contract shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

16.7.5. Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence, or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

16.7.6. Award Final. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

16.7.7. The City's Reservation of Rights. Notwithstanding any provision contained in this Article 16 or elsewhere in the Contract Documents, the **City** reserves the following rights in connection with Claims between the **City** and the **Contractor**, which rights may be exercised by the **City** unilaterally, in the **City's** sole discretion, and without the consent of the **Contractor**:

16.7.7.1. the right to institute legal action against the **Contractor** in any court of competent jurisdiction in lieu of demanding arbitration, in which case the dispute or disputes which are the subject of such action shall be decided by such court, and not by arbitration;

16.7.7.2. the right to obtain from any court of competent jurisdiction a stay of any arbitration instituted by the **Contractor**, provided that the application for such stay is made before the appointment of the neutral arbitrator in such arbitration, in which case the dispute or disputes which are the subject of such arbitration shall be decided by such court and not by arbitration;

16.7.7.3. the right to require the **Contractor** to join as a party in any arbitration between the **City** and the **Design Professional** relating to the Project, in which case the **Contractor** agrees to be bound by the decision of the arbitrator or arbitrators in such arbitration.

16.7.8. In case the **City** elects to proceed in accordance with 16.7.7.1. or 16.7.7.2. above, the word "litigation" shall be deemed to replace the word "arbitration" wherever the latter word appears in the Contract Documents.

ARTICLE 17: EMERGENCIES

17.1. In an emergency affecting the health and safety of persons or property, the **Contractor** shall act to prevent threatened damage, injury, or loss.

17.2. In emergencies affecting the health, safety, or protection of persons, the Work or property at the Site or adjacent thereto, the **Contractor**, without special instruction or authorization from the **City** or the **Design Professional**, is obligated to act to prevent threatened damage, injury, or loss. The **Contractor** shall give the **Design Professional** prompt written notice if the **Contractor** believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the **Design Professional** determines that a change in the Contract Documents is required because of the action taken by the **Contractor** in response to such an emergency, a **Construction Change Directive** or Change Order will be issued to document the consequences of such action.

ARTICLE 18: TERMINATION OR SUSPENSION OF THE CONTRACT

18.1. Suspension by the City.

18.1.1. At any time and without cause, the **City** may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the **Contractor** and the **Design Professional** that will fix the date on which Work will be resumed. The **Contractor** shall resume Work on the date so fixed. The **Contractor** shall be allowed an adjustment in the Contract Sum or an extension of the Contract Time, or both, directly attributable to any such suspension if the **Contractor** makes an approved Claim therefor.

18.1.2. If the Work is defective, if the **Contractor** fails to provide a sufficient number of skilled workers or suitable materials or equipment, or if the **Contractor** defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the **City** to begin and prosecute correction of such default or neglect with diligence and promptness, the **City** may correct such deficiencies, without prejudice to other remedies the **City** may have. In such case, an appropriate **Construction Change Directive** shall be issued deducting from payments then or thereafter due to the **Contractor** the cost of correcting such deficiencies including compensation for the **Design Professional's** additional services and expenses made necessary by such default, neglect, or failure and any and all direct, indirect, or consequential costs associated with the order to stop the Work. If such payments then or thereafter due the **Contractor** are not sufficient to cover such amounts, the **Contractor** shall immediately pay the difference to the **City**. The **Contractor** shall remain responsible for maintaining progress and shall not be entitled to any increase in the Contract Time or the Contract Sum.

18.2. Termination by the Contractor.

18.2.1. If, through no act or fault of the **Contractor**, a Subcontractor, or a Sub-subcontractor, the Work is suspended for a period of more than ninety (90) days by the **City**, or under an order of court or other public authority, or the **Design Professional** fails to act on any application for payment within thirty (30) days after it is submitted in proper form and content or the **City** fails for thirty (30) days to pay the **Contractor** any sum finally determined to be due, then the **Contractor** may terminate the Contract upon seven (7) days' written notice to the **City**, provided that the **City** does not remedy such suspension or failure within that time.

18.3. Termination by the City.

18.3.1. If the **Contractor** is adjudged a bankrupt, or if the **Contractor** makes a general assignment for the benefit of the **Contractor's** creditors, or if a receiver is appointed on account of the **Contractor's** insolvency, or if the **Contractor** persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if the **Contractor** fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction or disregards an instruction, order, or decision of the **Design Professional**, or otherwise is guilty of substantial violation of

any provision of the Contract, then the **Contractor** shall be in default, and the **City** may, without prejudice to any other right or remedy and upon written notice to the **Contractor**, take possession of all materials, tools, appliances, equipment, construction equipment and machinery and vehicles, offices and other facilities on the Project Site, and all materials intended for the Work, wherever stored, and, seven (7) days after such notice, may terminate the employment of the **Contractor**, accept assignment of any or all subcontracts pursuant to Paragraph __, and finish the Work by whatever method the **City** may deem expedient. The **City** shall be entitled to collect from the **Contractor** all direct, indirect, and consequential damages suffered by the **City** on account of the **Contractor's** default, including without limitation additional services and expenses of the **Design Professional** made necessary thereby. The **City** shall be entitled to hold all amounts due to the **Contractor** at the date of termination until all of the **City's** damages have been established, and to apply such amounts to such damages.

18.3.2. (*Reference:* Somerville Municipal Code Chapter 2.117, Section 2.117.110C). In the event the **Contractor** or any of its agents or employees violates any provision of Somerville Municipal Code Chapter 2.117 that is applicable to **City** contractors in connection with the awarding, administration, or performance of the Contract, the **City** may terminate the Contract.

ARTICLE 19: AMERICANS WITH DISABILITIES ACT; (42 U.S. 12131)

19.1. On July 26, 1994, the Americans with Disabilities Act ("the Act") became effective for employers of fifteen or more employees.

19.2. The Act protects against discrimination on the basis of "disability," which is defined as a physical or mental impairment that substantially limits at least one "major life activity;" or discrimination against an individual who has a record of such impairment; or discrimination against an individual being regarded - even if inaccurately - as having such impairment. The Act also expressly prohibits job discrimination that is based on any individual's relationship or association with a disabled person.

19.3. If the **Contractor** is subject to the Act, it must comply with its provisions.

ARTICLE 20: WRITTEN NOTICE TO THE PARTIES

20.1. In General.

20.1.1. All written communications from the **Design Professional** to the **Contractor** shall be copied to the **City**. All written communications from the **Contractor** to the **Design Professional** shall be copied to the **City**. All written communications from the **Contractor** to the **City** shall be copied to the **Design Professional**.

20.2. Addresses.

20.2.1. To the City. Written notice to the **City** shall be sent or hand-delivered to:

Purchasing Director
Purchasing Department
City of Somerville
93 Highland Avenue
Somerville, MA 02143

City Solicitor
Law Department
93 Highland Avenue
Somerville, MA 02143

Director of Office of Strategic Planning & Community Development
City of Somerville
93 Highland Avenue
Somerville, MA 02143

20.2.2. To the Contractor. Both the address given on the bid form upon which the Agreement is founded and the **Contractor's** office at or near the Site of the Work are hereby designated as places to either of which notices, letters, and other communications to the **Contractor** shall be certified, mailed, or delivered. Delivery of any notice, letter, or other communication to the **Contractor** at or depositing same in a postpaid wrapper directed to either place shall be deemed sufficient service thereof upon the **Contractor**. Written notice shall be deemed to have been duly served on the **Contractor** if it is sent or hand-delivered to any member or officer of the **Contractor**. The date of said service shall be the date of such delivery or mailing. The address may be changed at any time by an instrument in writing, executed and acknowledged by the **Contractor** and delivered to the **City** and to the **Design Professional**. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon the **Contractor** personally. Moreover, any notice, letter, or other communication required under the Contract may be served on the **Contractor's** representative at job meetings. The **Contractor** shall provide the **City** with its change of address seven (7) days prior to its effective date.

20.2.3. To the Design Professional. Written notice to the **Design Professional** shall be sent or hand-delivered to the address appearing on the Project Manual. Written notice shall be deemed to have been duly served on the **Design Professional** if it is sent or hand-delivered to any member or officer of the **Design Professional**.

ARTICLE 21: MISCELLANEOUS PROVISIONS

21.1. Governing Law.

21.1.1. This Contract shall be governed by the laws of the Commonwealth of Massachusetts.

21.2. Venue.

21.2.1. Venue for any court action or proceeding shall be Middlesex County in the Commonwealth of Massachusetts only. The **Contractor**, all Subcontractors, and Suppliers waive any and all jurisdictional and venue defenses.

21.3. Successors and Assigns.

21.3.1. The **Contractor** shall not assign, in whole or in part, its rights and obligations under the Contract Documents without prior written consent of the **City**. An assignment without the prior written consent of the **City** shall not relieve the **Contractor** of its obligations thereunder.

21.3.2. The **City** and the **Contractor** respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents.

21.4. Statutory Limitation Period.

21.4.1. It is expressly agreed that the obligations of the **Contractor** hereunder arise out of contractual duties, and that the failure of the **Contractor** to comply with the requirements of the Contract Documents shall constitute a breach of contract, not a tort, for the purpose of applicable statutes of limitations and repose. Any cause of action which the **City** may have on account of such failure shall be deemed to accrue only when the **City** has obtained actual knowledge of such failure, not before.

21.5. Rights and Remedies.

21.5.1. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

21.5.2. No action or failure to act by the **City**, the **Design Professional**, or the **Contractor** shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

THIS IS THE END OF THE GENERAL TERMS AND CONDITIONS

APPENDIX D

INSURANCE REQUIREMENTS

**APPENDIX D - INSURANCE REQUIREMENTS
INSURANCE SPECIFICATIONS**

INSURANCE REQUIREMENTS FOR AWARDED VENDOR ONLY:

Prior to commencing performance of any work or supplying materials or equipment covered by these specifications, the contractor shall furnish to the Office of the Purchasing Director a Certificate of Insurance evidencing the following:

A. GENERAL LIABILITY - Comprehensive Form

Bodily Injury Liability.....\$ One Million
Property Damage Liability.....\$ One Million

**B. COVERAGE FOR PAYMENT OF WORKER'S COMPENSATION
BENEFIT PURSUANT TO CHAPTER 152 OF THE MASSACHUSETTS
GENERAL LAWS IN THE AMOUNT AS LISTED BELOW:**

WORKER'S COMPENSATION.....\$ Statutory
EMPLOYERS' LIABILITY.....\$ Statutory

C. AUTOMOBILE LIABILITY INSURANCE AS LISTED BELOW:

BODILY INJURY LIABILITY.....\$ STATUTORY

1. A contract will not be executed unless a certificate (s) of insurance evidencing above-described coverage is attached.
2. Failure to have the above-described coverage in effect during the entire period of the contract shall be deemed to be a breach of the contract.
3. All applicable insurance policies shall read:
"CITY OF SOMERVILLE" as a certificate holder and as an additional insured for general liability only along with a description of operation in the space provided on the certificate.
4. Please comply with our requirement of a **ninety (90) day** notice of cancellation and note on certificate.

**Certificate Should Be Made Out To:
City Of Somerville
Purchasing Department
93 Highland Avenue
Somerville, Ma. 02143**

Note: If your insurance expires during the life of this contract, you shall be responsible to submit a new certificate(s) covering the period of the contract. No payment will be made on a contract with an expired insurance certificate.

ACORD

CERTIFICATE OF LIABILITY INSURANCE

OP ID BF
SEQUO-1DATE (MM/DD/YYYY)
03/20/09

PRODUCER DeSanctis Insurance Agcy, Inc. 36 Cummings Park Woburn MA 01801 Phone: 781-935-8480 Fax: 781-933-5645		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Sequoia Construction, Inc. 10 Buckley Avenue, Unit 9 Whitman MA 02382		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A Acadia Insurance Company	
		INSURER B	
		INSURER C	
		INSURER D	
		INSURER E	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY	CPA010928415	03/09/09	03/09/10	EACH OCCURRENCE	\$ 1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 250,000	
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000	
	<input checked="" type="checkbox"/> XCU Hazards				PERSONAL & ADV INJURY	\$ 1,000,000	
	<input checked="" type="checkbox"/> Contractual Liab.				GENERAL AGGREGATE	\$ 2,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$ 1,000,000	
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						
A	AUTOMOBILE LIABILITY	MAA010928815	03/09/09	03/09/10	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$	
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$	
	<input checked="" type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident)	\$	
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY						
	<input type="checkbox"/> ANY AUTO						
A	EXCESS/UMBRELLA LIABILITY	CUA010929015	03/09/09	03/09/10	EACH OCCURRENCE	\$ 2,000,000	
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 2,000,000	
	<input type="checkbox"/> DEDUCTIBLE					\$	
	<input checked="" type="checkbox"/> RETENTION \$ NONE					\$	
						\$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WCA010928915 MA	03/09/09	03/09/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 1,000,000	
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
	OTHER						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Additional Insured Limits are no greater than required by written contract
City of Somerville, MA is additional insured as respects GL Policy. Project:
4 Locations - ADA Ramps

CERTIFICATE HOLDER

CANCELLATION

CITY OF SOMERVILLE Purchasing Dept 93 Highland Avenue Somerville MA 02143	SOMER-1	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 90 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE 

APPENDIX E
WAGE RATES AND LIVING WAGE FORM

DAVIS BACON WAGE RATES

INSERT MANUALLY

GENERAL DECISION: MA20080013 01/02/2009 MA13

Date: January 2, 2009

General Decision Number: MA20080013 01/02/2009

Superseded General Decision Number: MA20070018

State: Massachusetts

Construction Types: Heavy (Heavy and Marine)

Counties: Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth and Suffolk Counties in Massachusetts.

HEAVY AND MARINE CONTRUCTION PROJECTS

Modification Number	Publication Date
0	02/08/2008
1	02/15/2008
2	03/07/2008
3	03/21/2008
4	04/04/2008
5	05/09/2008
6	06/06/2008
7	06/20/2008
8	06/27/2008
9	07/04/2008
10	07/18/2008
11	08/08/2008
12	08/15/2008
13	08/22/2008
14	09/05/2008
15	09/26/2008
16	10/03/2008
17	10/10/2008
18	11/14/2008
19	11/28/2008
20	12/26/2008
21	01/02/2009

BOIL0029-001 10/01/2008

	Rates	Fringes
BOILERMAKER.....	\$ 34.54	35%+8.96

BRMA0001-011 09/01/2008

FOXBORO CHAPTER

BRISTOL (Attleboro, Berkley, Dighton, Mansfield, North Attleboro, Norton, Raynham, Rehoboth, Seekonk, Taunton); NORFOLK, (Bellingham, Canton, Dedham, Foxboro, Franklin, Norfolk, Norwood, Plainville, Sharon, Walpole, Westrwood, Wrentham); and PLYMOUTH (Lakeville)

	Rates	Fringes
Bricklayer/Cement Mason.....	\$ 42.54	22.29

BRMA0001-012 09/01/2008

LOWELL CHAPTER

MIDDLESEX (Acton, Ashby, Ayer, Bedford, Billerica, Boxboro, Carlisle, Chemsford, Dracut, Dunstabale, Ft Devens, Groton, Littleton, Lowell, North Acton, Pepperell, Shirley, South Acton, Tewksbury, Townsend, Tyngsboro, West Acton, Westford, Wilmington)

	Rates	Fringes
BRICKLAYER.....	\$ 42.54	22.29

BRMA0001-013 09/01/2008		

LOWELL CHAPTER

MIDDLESEX (Ashland, Framingham, Holliston, Hopkinton, Hudson, Maynard, Natick, Sherborn, Stow); and NORFOLK (Medfield, Medway, Millis)

	Rates	Fringes
BRICKLAYER.....	\$ 42.54	22.29

BRMA0003-001 08/01/2008		

	Rates	Fringes
Marble & Tile Finisher.....	\$ 33.88	20.41
Marble, Tile & Terrazzo Workers.....	\$ 43.58	21.31
TERRAZZO FINISHER.....	\$ 42.58	21.14

BRMA0003-003 08/01/2008		

BOSTON CHAPTER

MIDDLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Somerville); NORFOLK (Brookline, Milton); and SUFFOLK

	Rates	Fringes
BRICKLAYER.....	\$ 43.54	21.36

BRMA0003-011 08/01/2008		

LYNN CHAPTER

ESSEX (Amesbury, Andover, Beverly, Boxford, Danvers, Essex, Georgetown, Gloucester, Groveland, Hamilton, Haverhill, Ipswich, Lawrence, Lynn, Lynnfield, Manchester, Marblehead, Merrimac, Methuen, Middleton, Nahant, Newbury, Newburyport, North Andover, Peabody, Rockport, Rowley, Salisbury, Salem, Saugus, Swampscott, Topsfield, Wakefield, Wenham, West Newbury); and MIDDLESEX (North Reading, Reading, Wakefield)

	Rates	Fringes
Bricklayer/Cement Mason.....	\$ 43.54	21.36

BRMA0003-012 08/01/2008		

	Rates	Fringes
--	-------	---------

BRICKLAYER

WALTHAM CHAPTER -
MIDDLESEX (Belmont,
Burlington, Concord,
Lexington, Lincoln,
Stoneham, Sudbury,
Waltham, Watertown,
Wayland, Weston,
Winchester, Woburn).....\$ 43.54

21.36

BRMA0003-014 08/01/2008

QUINCY CHAPTER

PLYMOUTH COUNTY (Abington, Bridgewater, Brockton, Carver,
Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham,
Hull, Kingston, Marshfield, Middleboro, Norwell, Pembroke,
Plymouth, Rockland, Scituate, West Bridgewater, Whitman)

Rates

Fringes

Bricklayer/Cement Mason.....\$ 43.54

21.36

BRMA0003-025 08/01/2008

NEW BEDFORD CHAPTER

BARNSTABLE; BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River,
Freetown, New Bedford, Somerset, Swansea, Westport); DUKES;
NANTUCKET; PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham)

Rates

Fringes

Bricklayer/Cement Mason.....\$ 43.54

21.36

BRMA0032-001 02/01/2005

MIDDLESEX (Newton) AND NORFOLK (Dover, Needham, Wellesley)
COUNTIES

Rates

Fringes

Bricklayer/Cement Mason.....\$ 36.01

17.94

CARP0026-003 09/01/2008

BRISTOL (Attleborough, North Attleborough); ESSEX; MIDDLESEX
(Except Belmont, Cambridge, Everett, Malden, Medford,
Somerville); AND NORFOLK (Bellingham, Braintree, Canton,
Cohasset, Foxboro, Franklin, Medfield, Medway, Millis,
Needham, Norfolk, Norwood, Plainville, Quincy, Sharon, Walpole,
Wellesley, Westwood, Weymouth, Wrentham) COUNTIES

Rates

Fringes

CARPENTER.....\$ 31.08

20.69

CARP0033-003 09/01/2008

MIDDLESEX (Belmont, Cambridge, Everett, Malden, Medford,
Somerville); NORFOLK (Brookline, Dedham, Milton); AND SUFFOLK
COUNTIES

	Rates	Fringes
CARPENTER.....	\$ 36.48	20.94

CARP0056-001 09/01/2007		

All of SUFFOLK COUNTY; and those areas of BARNSTABLE, BRISTOL, ESSEX, MIDDLESEX, NORFOLK, and PLYMOUTH COUNTIES situated INSIDE Boston Beltway (I-495) and North of Cape Cod Canal

	Rates	Fringes
Piledrivermen & Diver's Tender...	\$ 34.82	21.94

CARP0056-002 09/01/2007		

DUKES and NANTUCKET COUNTIES; and those areas of BARNSTABLE, BRISTOL, PLYMOUTH, and NORFOLK COUNTIES situated OUTSIDE Boston Beltway (I-495) and South of Cape Cod Canal

	Rates	Fringes
Piledrivermen & Diver's Tender...	\$ 34.82	21.94

CARP0056-003 09/01/2007		

Those areas of ESSEX and MIDDLESEX COUNTIES situated OUTSIDE Boston Beltway (I-495)

	Rates	Fringes
Piledrivermen & Diver's Tender...	\$ 34.82	21.94

CARP0056-004 09/01/2007		

	Rates	Fringes
Diver.....	\$ 48.75	21.94

CARP0424-001 09/01/2008		

NORFOLK (Braintree, Quincy, Cohasset, Weymouth, etc.) PLYMOUTH (Duxbury, Hanover, Hull, Hingham, Marshfield, Norwell, Pembroke Rockland, Scituate)

	Rates	Fringes
CARPENTER.....	\$ 31.08	20.69

CARP0624-002 09/01/2008		

BARNSTABLE; BRISTOL (Except Attleboro & North Attleboro); DUKES; NANTUCKET; NORFOLK (Avon, Holbrook, Randolph, Stoughton); PLYMOUTH (Bridgewater, Kingston, Lakeville, Middleboro, Plymouth, S. Hanover, Whitman)

	Rates	Fringes
CARPENTER.....	\$ 31.08	20.69

CARP1121-001 03/01/2007		

	Rates	Fringes
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MILLWRIGHT.....\$ 30.52 19.83

ELEC0096-001 06/01/2008

MIDDLESEX (Ashby, Ashland, Ayer, Ft. Devens, Groton, Hopkinton, Hudson, Marlboro, Pepperell, Shirley, Stow, Townsend)

	Rates	Fringes
ELECTRICIAN.....	\$ 33.88	17.30
Teledata System Installer.....	\$ 24.91	14.25

ELEC0099-001 06/01/2008

BRISTOL (Attleboro, North Attleboro, Seekonk)

	Rates	Fringes
ELECTRICIAN.....	\$ 34.08	47.41%
Teledata System Installer.....	\$ 25.56	11.14

ELEC0103-002 09/01/2008

ESSEX (Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andover, Rowley, Salisbury, West Newbury); MIDDLESEX (Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, North Reading, Tewksbury, Tyngsboro, Westford, Wilmington)

	Rates	Fringes
ELECTRICIAN.....	\$ 40.73	22.52

ELEC0103-004 09/01/2008

ESSEX (Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Salem, Topsfield, Wenham)

	Rates	Fringes
ELECTRICIAN.....	\$ 40.73	22.52

ELEC0103-005 09/01/2008

ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott); MIDDLESEX (Acton, Arlington, Belmont, Cambridge, Concord, Everett, Framingham, Holliston, Lexington, Lincoln, Malden, Maynard, Medford, Melrose, Natick, Newton, Reading, Sherborn, Somerville, Stoneham, Sudbury, Wakefield, Waltham, Watertown, Wayland, Weston, Winchester, Woburn); NORFOLK (Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxboro, Franklino, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Sharon, Walpole, Wellesley, Westwood, Weymouth, Wrentham); PLYMOUTH (Hingham and Hull); SUFFOLK

	Rates	Fringes
ELECTRICIAN.....	\$ 40.73	22.52

ELEC0104-001 09/03/2006

	Rates	Fringes
Line Construction:		
Cableman.....	\$ 30.51	7.64+A
Equipment Operator.....	\$ 30.51	11.64+A
Groundman.....	\$ 19.74	7.64+A
Lineman.....	\$ 35.89	12.64+A

A. PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day and Columbus Day, provided the employee has been employed 5 working days prior to any one of the listed holidays.

ELEC0223-002 09/01/2008

BARNSTABLE, BRISTOL (Except Attleboro, North Attleboro, Seekonk); DUKES; NANTUCKET; PLYMOUTH (Except Hingham and Hull Twps); NORFOLK (Avon, Halbrook, Randolph, Sloughton)

	Rates	Fringes
ELECTRICIAN.....	\$ 33.80	16.17

ENGI0004-009 12/01/2008

	Rates	Fringes
Power equipment operators:		
Group 1.....	\$ 36.86	20.23+A
Group 2.....	\$ 36.54	20.23+A
Group 3.....	\$ 26.81	20.23+A
Group 4.....	\$ 31.39	20.23+A
Group 5.....	\$ 21.00	20.23+A
Group 6.....	\$ 23.82	20.23+A

HOURLY PREMIUM FOR BOOM LENGTHS (Including Jib):

Over 150 ft.	+1.95
Over 185 ft.	+3.42
Over 210 ft.	+4.80
Over 250 ft.	+7.28
Over 295 ft.	+10.08
Over 350 ft.	+11.73

FOOTNOTE FOR POWER EQUIPMENT OPERATORS:

A. PAID HOLIDAYS: New Year's Day, Washington's Birthday, Labor Day, Memorial Day, Independence Day, Patriot's Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day

POWER EQUIPMENT OPERATORS CLASSIFICATIONS [HEAVY CONSTRUCTION]

GROUP 1: Power shovel; crane; truck crane; derrick; pile driver; trenching machine; mechanical hoist pavement breaker; cement concrete paver; dragline; hoisting engine; three drum machine; pumpcrete machine; loaders; shovel dozer; front end loader; mucking machine; shaft hoist; steam engine; backhoe; gradall; cable way; fork lift; cherry picker; boring machine; rotary drill; post hole hammer; post hole digger; asphalt plant on job site; concrete batching and/or mixing plant on job site; crusher plant on job site; paving concrete mixer; timber jack

GROUP 2: Sonic or vibratory hammer; grader; scraper; tandem scraper; bulldozer; tractor; mechanic - maintenance; York rake; mulching machine; paving screed machine; stationary steam boiler; paving concrete finishing machine; grout pump; portable steam boiler; portable steam generator; roller; spreader; asphalt paver; locomotives or machines used in place thereof; tamper (self propelled or tractor-drawn); cal tracks; ballast regulator; rail anchor machine; switch tamper; tire truck

GROUP 3: Pumps (1-3 grouped); compressor; welding machines (1-3 grouped); generator; sighting plant; heaters (power driven, 1- 5); syphon-pulsometer; concrete mixer; valves controlling permanent plant air steam, conveyor, wellpoint system (operating)

GROUP 4: Assistant engineer (fireman)

GROUP 5: Oiler (other than truck cranes and gradalls)

GROUP 6: Oiler (on truck cranes and gradalls)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS [MARINE CONSTRUCTION]

Group 1: Shovel; crane; truck crane; cherry picker; derrick; pile driver; two or more drum machines; lighters; derrick boats; trenching machines; mechanic hoist pavement breakers; cement concrete pavers; draglines; hoisting engines; pumpcrete machines; elevating graders; shovel dozer; front end loader; backhoe; gradall; cable ways; boring machine; rotary drill; post hole hammer; post hole digger; fork lift; timber jack; asphalt plant (on site); concrete batching and/or mixing plant (on site); crusher plant (on site); paving concrete mixer

Group 2: Portable steam boiler; portable steam generator; sonic or vibratory hammer; grader; scraper; tandem scraper; concrete pump; bulldozer; tractor; York rake; mulching machine; roller; spreader; tamper (self-propelled or tractor-drawn); asphalt paver; concrete mixer with side loader; mechanic - maintenance; cal tracks; ballast regulator; switch tamper; rail anchor machine; tire truck

Group 3: Pumps (1-3 grouped); compressor; welding machines (1-3 grouped); generator; lighting plant; heaters (power driven 1-5); syphon-pulsometer; concrete mixer; valves controlling permanent plant air or steam; conveyor; well point systems; auger (powered by independent engines and attached to pile drivers); hydraulic saws

Group 4: Fireman

Group 5: Assistant engineer (other than truck crane and gradall)

Group 6: Assistant engineer (on truck crane and gradall)

IRON0007-001 09/16/2008

Rates

Fringes

IRONWORKER

BRISTOL (Easton); ESSEX
 (Beverly, Gloucester, Lynn,
 Lynnfield,
 Manchester, Marblehead,
 Nahant, Salem, Saugus,
 Swampscott); MIDDLESEX
 (Arlington, Bedford,
 Belmont, Burlington,
 Cambridge,
 Concord, Everett,
 Framingham, Lexington,
 Lincoln, Malden, Maynard,
 Medford, Melrose, Natick,
 Newton, Reading, Sherborn,
 Somerville, Stoneham,
 Sudbury, Wakefield,
 Waltham, Watertown,
 Wayland, Weston,
 Winchester, Woburn);
 NORFOLK (Except Medway);
 PLYMOUTH (Abington,
 Bridgewater, Brockton,
 Duxbury, East Bridgewater,
 Halifax, Hanover, Hanson,
 Hingham, Hull, Kingston,
 Marshfield, Norwell,
 Pembroke, Plymouth,
 Plympton, Rockland,
 Scituate, West
 Bridgewater, Whitman);
 SUFFOLK.....\$ 34.89 22.85
 ESSEX (Amesbury, Andover,
 Boxford, Danvers, Essex,
 Georgetown, Hamilton,
 Haverhill, Ipswich,
 Lawrence, Merrimac,
 Methuen, Newbury,
 Newburyport, North
 Andover, Rockport, Rowley,
 Salisbury, Topsfield,
 Wenham, West Newbury);
 MIDDLESEX
 (Action, Billerica,
 Carlisle, Chelmsford,
 Dracut, Dunstable, Groton,
 Groveland, Littleton,
 Lowell, Middleton, North
 Reading, Pepperell,
 Tewksbury, Tyngsboro,
 Westford, Wilmington).....\$ 30.48 22.85

 IRON0007-010 09/16/2008

MIDDLESEX (Ashby, Ashland, Ayer, Boxboro, Holliston, Hopkinton,
 Hudson, Marlboro, Shirley, Stow, Townsend); NORFOLK (Medway)

	Rates	Fringes
IRONWORKER.....	\$ 34.89	22.85

* IRON0037-002 12/29/2008

BARNSTABLE; BRISTOL (Acushnet, Attleboro, Berkley, Dartmouth, Dighton, Fairhaven, Fall River, Freetown, Mansfield, New Bedford, North Attleboro, Norton, Raynham, Rehoboth, Seekonk, Somerset, Swansea, Taunton, Westport); DUKES; NANTUCKET; NORFOLK (Billingham, Franklin, Plainville, Wrentham); PLYMOUTH (Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham)

	Rates	Fringes
IRONWORKER.....	\$ 30.45	18.37

LABO0022-006 12/01/2008		

SUFFOLK COUNTY (Boston, Chelsea, Revere, Winthrop, Deer & Nut Islands); MIDDLESEX COUNTY (Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Medford, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn only); NORFOLK COUNTY (Brookline, Dedham, and Milton only)

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 28.50	17.05
GROUP 2.....	\$ 28.75	17.05
GROUP 3.....	\$ 29.15	17.05
GROUP 4.....	\$ 29.50	17.05
GROUP 5.....	\$ 22.60	17.05
GROUP 6.....	\$ 30.50	17.05

LABORERS CLASSIFICATIONS

GROUP 1: Laborers; carpenter tenders; cement finisher tenders

GROUP 2: Asphalt raker; fence and guard rail erector; laser beam operator; mason tender; pipelayer; pneumatic drill operator; pneumatic tool operator; wagon drill operator

GROUP 3: Air track operator; block paver; rammer; curb setter

GROUP 4: Blaster; powderman

GROUP 5: Flagger

GROUP 6: Asbestos Abatement; Toxic and Hazardous Waste Laborers

LABO0022-012 12/01/2008

Counties of BARNSTABLE; BRISTOL; DUKES; ESSEX; NANTUCKET; PLYMOUTH; MIDDLESEX (With the exception of Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn); NORFOLK (With the exception of Brookline, Dedham, and Milton)

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 26.55	15.65

GROUP 2.....	\$ 27.05	15.65
GROUP 3.....	\$ 27.30	15.65
GROUP 4.....	\$ 27.55	15.65
GROUP 5.....	\$ 20.65	15.65
GROUP 6.....	\$ 28.55	15.65

LABORERS CLASSIFICATIONS

GROUP 1: Laborers; carpenter tenders; cement finisher tenders

GROUP 2: Asphalt raker; fence and guard rail erector; laser beam operator; mason tender; pipelayer; pneumatic drill operator; pneumatic tool operator; wagon drilloperator

GROUP 3: Air track operator; block paver; rammer; curb setter; hydraulic & similar self powere drills

GROUP 4: Blaster; powderman

GROUP 5: Flagger

GROUP 6: Asbestos Abatement; Toxic and Hazardous Waste Laborers

LABO0022-013 12/01/2008

	Rates	Fringes
Laborers:		
(FREE AIR OPERATION):		
SHIELD DRIVEN AND LINER		
PLATE IN FREE AIR)		
GROUP 1.....	\$ 31.10	18.60+A
GROUP 2.....	\$ 31.10	18.60+A
(OPEN AIR CASSONS,		
UNDERPINNING AND TEST		
BORING INDUSTRIES):		
TEST BORING & WELL DRILLING		
Driller.....	\$ 29.75	17.20+A
Laborer.....	\$ 28.35	17.20+A
(OPEN AIR CASSONS,		
UNDERPINNING AND TEST		
BORING INDUSTRIES):		
OPEN AIR CASSON,		
UNDERPINNING WORK & BORING		
CREW		
Bottom man.....	\$ 29.50	17.20+A
Laborers; Top man.....	\$ 28.35	17.20+A
(TUNNELS, CAISSON &		
CYLINDER WORK IN		
COMPRESSED AIR)		
GROUP 1.....	\$ 28.55	18.60+A
GROUP 2.....	\$ 39.03	18.60+A
GROUP 3.....	\$ 39.03	18.60+A
GROUP 4.....	\$ 39.03	18.60+A
GROUP 5.....	\$ 39.03	18.60+A

GROUP 6.....	\$ 41.03	18.60+A
CLEANING CONCRETE AND		
CAULKING TUNNEL (Both New		
& Existing)		
GROUP 1.....	\$ 31.10	18.60+A
GROUP 2.....	\$ 31.10	18.60+A
ROCK SHAFT, CONCRETE		
LINING OF SAME AND TUNNEL		
IN FREE AIR		
GROUP 1.....	\$ 28.55	18.60+A
GROUP 2.....	\$ 31.10	18.60+A
GROUP 3.....	\$ 31.10	18.60+A
GROUP 4.....	\$ 31.10	18.60+A
GROUP 5.....	\$ 33.10	18.60+A

LABORERS CLASSIFICATIONS for TUNNELS, CAISSON & CYLINDER WORK
IN COMPRESSED AIR

GROUP 1: Powder watchman; Top man on iron bolt; change house attendant

GROUP 2: Brakeman; trackman; groutman; tunnel laborer; outside lock tender; lock tender; guage tender

GROUP 3: Motorman, miner

GROUP 4: Blaster

GROUP 5: Mucking machine operator

GROUP 6: Hazardous Waste work within the "HOT" zone. (A premium of two dollars \$2.00 per hour over the basic wage rate.

LABORERS CLASSIFICATIONS for (FREE AIR OPERATION): SHIELD
DRIVEN AND LINER PLATE IN FREE AIR

GROUP 1: Miner; miner welder; conveyor operator; motorman; mucking machine operator; nozzle man; grout man-; pumps, shaft and tunnel steel and rodman; shield and erector arm operators, mole nipper, outside motorman, burner, TBM operator, safety miner; laborer topside; heading motormen; erecting operators; top signal men

GROUP 2: Brakeman; trackman

LABORERS CLASSIFICATIONS FOR CLEANING CONCRETE AND CAULKING
TUNNEL (Both New & Existing)

GROUP 1: Concrete workers; strippers and form movers (wood & steel), cement finisher

GROUP 2: Form erector (wood & steel and all accessories)

LABORERS CLASSIFICATIONS for ROCK SHAFT, CONCRETE LINING OF
SAME AND TUNNE IN FREE AIR

GROUP 1: Change house attendants

GROUP 2: Laborers, topside, bottom men (when heading is 50 ft. from shaft) and all other laborers

GROUP 3: Brakeman; trackman; tunnel laborers; shaft laborers

GROUP 4: Miner; cage tender; bellman

GROUP 5: Hazardous Waste work within the "HOT" zone. (A premium of two dollars \$2.00 per hour over the basic wage rate)

FOOTNOTE FOR LABORERS:

A. PAID HOLIDAYS: New Year's Day, Washington's Birthday, Patriot's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day

LABO1421-001 12/01/2008

WRECKING LABORERS:

	Rates	Fringes
Laborers:		
WRECKING LABORERS:		
Adzeman.....	\$ 28.50	17.05
Asbestos, Toxic,		
Hazardous Waste.....	\$ 28.50	17.05
Burners, Jackhammers.....	\$ 29.25	17.05
Small Backhoes, Loaders		
on Tracks, Bobcat Type		
Loaders and Hydraulic		
"Brock" Type Hammer		
Operators, Concrete		
Cutting Saws, Journeyman,		
Concrete Sawyer.....	\$ 29.50	17.05
Wrecking Laborer.....	\$ 28.50	17.05
Yardman Laborer (Salvage		
Yard Only).....	\$ 24.50	17.05
Yardman, Burners, Sawyers..	\$ 27.60	17.05

PAIN0035-001 07/01/2008

BARNSTABLE BRISTOL; DUKES; ESSEX; NANTUCKET; PLYMOUTH
(Remainder of NORFOLK; MIDDLESEX AND SUFFOLK COUNTIES)

	Rates	Fringes
Painters:		
NEW CONSTRUCTION:		
Bridge.....	\$ 41.26	19.70
Brush, Taper.....	\$ 30.76	19.70
Spray, Sandblast.....	\$ 32.16	19.70
REPAINT:		
Bridge.....	\$ 41.26	19.70
Brush, Taper.....	\$ 28.82	19.70
Spray, Sandblast.....	\$ 30.22	19.70

PAIN0035-015 07/01/2008

MIDDLESEX (Cambridge, Everett, Malden, Medford, Somerville)
SUFFOLK COUNTY (Boston, Chelsea) NORFOLK COUNTY (Brookline)

Rates	Fringes
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Painters:

NEW CONSTRUCTION:

Brush, Taper.....	\$ 36.55	19.70
Spray, Sandblast.....	\$ 37.95	19.70

REPAINT:

Bridge.....	\$ 41.26	19.70
Brush, Taper.....	\$ 34.61	19.70
Spray, Sandblast.....	\$ 36.01	19.70

PAIN0035-017 06/01/2008

	Rates	Fringes
Sign Painter.....	\$ 24.05	12.47

* PLAS0534-001 01/01/2009

ESSEX; MIDDLESEX; NORFOLK AND SUFFOLK COUNTY

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 35.00	25.76

PLUM0004-001 09/01/2008MIDDLESEX (Ashby, Ayer-West of Greenville branch of Boston and
Maine Railroad, Ft. Devens, Groton, Shirley, Townsend)

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 36.04	19.83

PLUM0012-001 03/01/2008

ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott); MIDDLESEX
(Acton, Arlington, Ashland, Ayer - except W. of Greenville
Branch of Boston & Maine RR, Bedford, Belmont, Billerica,
Boxboro, Burlington, Cambridge, Carlisle, Chelmsford, Concord,
Dracut, Dunstable, Everett, Framingham, Hudson, Holliston,
Hopkinton, Lexington, Lincoln, Littleton, Lowell, Malden,
Marlboro, Maynard, Medford, Melrose, Natick, Newton, North
Reading, Pepperell, Reading, Sherborn, Somerville, Stoneham,
Stow, Sudbury, Tewksbury, Tyngsboro, Wakefield, Waltham,
Watertown, Wayland, Westford, Wilmington, Winchester, Woburn);
NORFOLK (Bellingham, Braintree, Brookline, Canton, Cohasset,
Dedham, Dover, Foxboro, Franklin, Medfield, Medway, Millis,
Milton, Needham, Norfolk, Norwood, Plainville, Quincy, Sharon,
Walpole, Wellesley, Westwood, Weymouth, Wrentham); PLYMOUTH
(Hingham, Hull, Scituate); SUFFOLK

	Rates	Fringes
PLUMBER.....	\$ 42.97	20.23

PLUM0051-005 09/01/2008BARNSTABLE; BRISTOL; DUKES; NANTUCKET; NORFOLK (Avon, Holbrook,
Randolph, Stoughton) PLYMOUTH (Remainder of County)

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 33.61	22.22

 PLUM0138-001 03/01/2008

ESSEX (Ames, Andover, Beverly, Boxford, Byfield, Danvers, Essex, Georgetown, Gloucester, Groveland, Hamilton, Haverhill, Ipswich, Lawrence, Manchester, Marblehead, Merrimac, Methuen, Middleton, Newbury, Newburyport, North Andover, Peabody, Rockport, Rowley, Salem, Salisbury, Topsfield, Wenham, West Newbury)

	Rates	Fringes
Plumber, Pipefitter, Steamfitter.....	\$ 34.66	22.21

PLUM0537-001 09/01/2008

MIDDLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Reading, Wakefield, Winchester and Woburn); NORFOLK (Bellingham, Braintree, Brookline, Canton Cashasset, Dedham, Foxboro, Franklin, Millis, Milton, Sharon, Walpole, Westwood, and Wrentham); PLYMOUTH (Hingham, Hull, Scituate); ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott); SUFFOLK (Boston and Chelsea)

	Rates	Fringes
PIPEFITTER.....	\$ 45.34	20.06

TEAM0379-001 06/01/2008

	Rates	Fringes
Truck drivers:		
Group 1.....	\$ 29.63	11.51+A+B
Group 2.....	\$ 29.80	11.51+A+B
Group 3.....	\$ 29.87	11.51+A+B
Group 4.....	\$ 29.99	11.51+A+B
Group 5.....	\$ 30.09	11.51+A+B
Group 6.....	\$ 30.38	11.51+A+B
Group 7.....	\$ 30.67	11.51+A+B

POWER TRUCKS \$.25 DIFFERENTIAL BY AXLE
 TUNNEL WORK (UNDERGROUND ONLY) \$.40 DIFFERENTIAL BY AXLE
 HAZARDOUS MATERIALS (IN HOT ZONE ONLY) \$2.00 PREMIUM

TRUCK DRIVERS CLASSIFICATIONS

Group 1: Station wagons; panel trucks; and pickup trucks

Group 2: Two axle equipment; & forklift operator

Group 3: Three axle equipment and tireman

Group 4: Four and Five Axle equipment

Group 5: Specialized earth moving equipment under 35 tons
 other than conventional type trucks; low bed; vachual;
 mechanics, paving restoration equipment

Group 6: Specialized earth moving equipment over 35 tons

Group 7: Trailers for earth moving equipment (double hookup)

FOOTNOTES:

A. PAID HOLIDAYS: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Patriot's Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day

B. PAID VACATION: Employees with 4 months to 1 year of service receive 1/2 day's pay per month; 1 week vacation for 1 - 5 years of service; 2 weeks vacation for 5 - 10 years of service; and 3 weeks vacation for more than 10 years of service

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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**NOTICE TO ALL EMPLOYEES
REGARDING
PAYMENT OF LIVING WAGE**

Under the Somerville Living Wage Ordinance (Ordinance No. 1999-1), all employees directly expending their time on any City of Somerville contract in excess of \$10,000 are required to be paid a minimum wage of at least \$10.84 per hour. The only employees who are not covered by the Living Wage Ordinance are individuals in a Youth Program. "Youth Program" as defined in the Ordinance, "means any city, state or federally funded program which employs youth, as defined by city, state or federal guidelines, during the summer, or as part of a school to work program, or in other related seasonal or part-time program." For a copy of the Living Wage Ordinance, please contact Rositha Durham, Purchasing Director, City of Somerville 93 Highland Avenue, Somerville, MA 02143 (617-625-6600, x. 3400).

SOMERVILLE LIVING WAGE ORDINANCE FORM

(Ordinance No. 1999-1*)

This form shall be included in all Invitations for Bids and Requests for Proposals which involve the furnishing of labor, time or effort (with no end product other than reports) by vendors contracting or subcontracting with the City of Somerville, where the contract price meets or exceeds the following dollar thresholds:

- a) \$50,000 for contracts commencing during the period 7-1-99 to 6-30-01
(Fiscal Years 2000 and 2001);
- b) \$30,000 for contracts commencing during the period 7-1-01 to 6-30-03
(Fiscal Years 2002 and 2003); and
- c) \$10,000 for contracts commencing during the period 7-1-03 and thereafter
(Fiscal Years 2004 and thereafter.);

The purpose of this form is to ensure that such vendors pay a "Living Wage" (defined below) to all covered employees (i.e., all employees except individuals in a city, state or federally funded youth program). In the case of bids, the City will award the contract to the lowest responsive and responsible bidder paying a Living Wage. In the case of RFP's, the City will select the most advantageous proposal from a responsive and responsible offeror paying a Living Wage. In neither case, however, shall the City be under any obligation to select a bid or proposal that exceeds the funds available for the contract.

Definition of "Living Wage" For this contract or subcontract, as of 07-01-2008 "Living Wage" shall be deemed to be an hourly wage of no less than \$10.84/hour. From time to time, the Living Wage may be upwardly adjusted and amendments, if any, to the contract or subcontract may require the payment of a higher hourly rate if a higher rate is then in effect.

If the undersigned bidder or offeror is selected, this form will be attached to the contract or subcontract and the certifications made herein shall be incorporated as part of such contract or subcontract.

CERTIFICATIONS

- 1. The undersigned shall pay no less than the Living Wage to all covered employees who directly expend their time on the contract or subcontract with the City of Somerville.
- 2. The undersigned shall post a notice, (copy enclosed), to be furnished by the contracting City Department, informing covered employees of the protections and obligations provided for in the Somerville Living Wage Ordinance, and that for assistance and information, including copies of the Ordinance, employees should contact the contracting City Department. Such notice shall be posted in each location where services are performed by covered employees, in a conspicuous place where notices to employees are customarily posted.

* Copies of the Ordinance are available upon request to the Purchasing Department.

3. The undersigned shall maintain payrolls for all covered employees and basic records relating hereto and shall preserve them for a period of three years. The records shall contain the name and address of each employee, the number of hours worked, the gross wages, a copy of the social security returns, and evidence of payment thereof and such other data as may be required by the contracting City Department from time to time.
4. The undersigned shall submit payroll records to the City upon request and, if the City receives information of possible noncompliance with the provisions the Somerville Living Wage Ordinance, the undersigned shall permit City representatives to observe work being performed at the work site, to interview employees, and to examine the books and records relating to the payrolls being investigated to determine payment of wages.
5. The undersigned shall not fund wage increases required by the Somerville Living Wage Ordinance by reducing the health insurance benefits of any of its employees.
6. The undersigned agrees that the penalties and relief set forth in the Somerville Living Wage Ordinance shall be in addition to the rights and remedies set forth in the contract an/or subcontract.

Executed this 13TH day of FEB., 2009.

SEQUOIA CONSTRUCTION INC.

Name of Vendor

By: KEVIN McCloud

Name

Its: TREASURER

Title

KMcCloud

Signature